IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 21.9.2006

Coram

THE HONOURABLE MR.JUSTICE R. BALASUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE P.P.S. JANARTHANA RAJA

A.S.NOs.198 and 199 OF 2004
& C.M.P.Nos.6400 & 6410 of 2001 & 9715 of 2006

The Special Tahsildar
Metro Water Scheme
Poonamallee
No.1, Pumping Station road
Chintadripet, Chennai-2. ...Appellant in both appeals

-Vs.-

Nelavthy Ammal .. Respondent in A.S.No.198/2004

1. Danalakshmi Ammal
2. Damodara Mudaliar
3. Kamatchi
4. Srinivasan
5. Indirani
6. Venukumar
7. Priya
   R.7 impleaded as party respondent
   vide order dated 8.9.2006
   in C.M.P.NO.9434 of 2006 ..Respondents in A.S.NO.199/2004.

Appeals against the judgment and decree dated 22.9.2003 made in L.A.O.P.Nos.2 of 2001 and 1 of 2002 on the file of Additional District Judge (Fast Track Court No.4), Poonamallee.

For Appellant : Mr.V.Ravi,Spl.G.P.

For Respondents : Mr.R. Mahalingam
for RR 1,2,4 o 6
AR.L.Sundaresan,SC
for Mr.K.Govi Ganesan for R7

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J U D G M E N T

(Judgment of the Court was delivered by R. Balasubramanian, J)

The Government is challenging the higher compensation awarded by the Reference Court. Heard Mr.V.Ravi, learned Special Government Pleader for the State and Mr.AR.L.Sundaresan, learned Senior Counsel for the land owners. L.A.O.P.No.2 of 2001, out of which A.S.No.198 of 2004 had arisen relates to acquisition of 2.30.5 hectares of land in Survey No.3/1. L.A.O.P.No.1 of 2002, out of which A.S.No.199 of 2004 had arisen relates to acquisition of 1.88.0 hectares of land in Survey No.4/2. The acquired lands are in Meppur Vilalge. The purpose of acquisition is stated to be for a public purpose namely, to locate a water treatment plant for Chennai Metro Water Supply and Sewerage Board. The total extent acquired from several land owners including the present land owners is 5.19.5 hectares equivalent to 12.84 acres. The Award Enquiry Officer had a sale deed dated 19.12.1997 for an extent of 2.57 acres in Survey Nos.14/1 and 14/2 respectively wherein, the total consideration was fixed at Rs.1,28,500/- working out to Rs.500/- per cent. On that basis, for the respective extents of lands acquired, the Award Enquiry Officer passed an award. At the instance of the land owners a reference under Section 18(1) of the Land Acquisition Act was made and that is how L.A.O.P.NOs.2 of 2001 and 1 of 2002 were taken up before the Reference Court for disposal. Before the Reference Court, the land owner in L.A.O.P.No.1 of 2002 gave evidence as Claimant Witness No.1 in both the proceedings. A revenue official was examined as R.W.1 in both the proceedings. Exs.A.1 to A.3 came to be marked through C.W.1. The Reference Court after taking into account the entire materials including the potential value of the lands sought to be acquired and the similarities and dissimilarities of the lands surrounding the acquired lands, accepting Ex.A.2 as a comparable sale deed, fixed the compensation at Rs.12,208/- per cent. The State, as already stated, is before this court challenging those two awards giving an enhanced compensation. Since originally both the matters came to be disposed of by a common judgment and the fact that the lands in question are in close proximity to each other, we are inclined to disposed of both the appeals by a common judgment.

2. Mr.V.Ravi, learned Special Government Pleader arguing for the State would submit that the lands acquired is most comparable only to the sale deed dated 19.12.1997 relied upon by the Award Enquiry Officer as the data sale deed; all the locational advantages, which Claimant Witness No.1 claim to be in close proximity to the lands acquired, are far away; the lands acquired definitely requires development, which is not going to take place over night; considerable expenditure would have to be incurred in developing the lands acquired; the lands are described to be lands fit for cultivation whereas the intended use is to have a water treatment plant; therefore for converting the usage of the land from agricultural purpose into a potential area, for putting up a water treatment plant, substantial sum of money must be spent; Ex.A.2 is in respect of a small

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extent of 2600 sq.ft. which is shown to be a fully developed house site; therefore the land conveyed under Ex.A.2 cannot be taken as a comparable land for the acquired lands and even assuming that this Court accepts Ex.A.2 as a comparable sale deed, yet, substantial deductions have to be made for development charges for the lands acquired and for converting its use from one of agricultural purpose into one of potential water treatment plant site. In this context, learned Special Government Pleader relied upon the judgment of the Supreme Court reported in A.I.R. 1996 S.C. 3168 (BASAVVA v. SPL. LAND ACQUISITION OFFICER) to contend as to what should be the approach of a Court when comparable sale deeds relate to small extent of land while the acquired land is a large tract of land. Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the land owners would submit by relying upon the judgment of the Supreme Court reported in (2006) 3 S.C.C. 205 (RISHI SINGH v. MEERUT DEVELOPMENT AUTHORITY) that there is no Bar to have data sale deeds of small plots being considered in arriving at the market value of the land. By relying upon the judgment of the Supreme Court reported in 1991(4) S.C.C. 506 (BHAGWATHULA SAMANNA v. SPL.TAHSILDAR AND LAND ACQUISITION OFFICER), learned Senior Counsel would contend that when the comparable land and the acquired land are found to be similar in all aspects, then there is no need at all for making a deduction from the compensation payable, whether such comparable sale deed is in respect of a smaller extent or of a larger extent. Relying upon the judgment of the Supreme Court reported in JT 2002(9) S.C. 299 (KASTURI AND ORS. v. STATE OF HARYANA), learned Senior Counsel would contend that even assuming this Court is going to make a deduction towards development charges, it need not exceed 20% on the facts of this case. Learned Senior Counsel took considerable pains in taking us through the entire judgment as well as the evidence of the claimant in proof affidavit; his cross examination and the evidence of R.W.1 to contend that the importance of the locality, in which the acquired lands are situated, is so very high and in demand, there is no need at all to make any deduction.

3. Having regard to the submissions made by the learned Special Government Pleader and the learned Senior Counsel for the land owners, we initially applied our mind to find our whether the lands acquired is in an underdeveloped area or a developed area and whether it has any locational advantages and potentialities, since that would be a guiding line in deciding what would be the market value of the lands acquired. It has come out in evidence that hardly within a distance of 500 feet or 1000 feet Chennai - Bangalore National Highway is situated. It has also come out in evidence that in close proximity to the lands acquired, the highway leading to Tirupathi from Chennai branch off from Chennai - Bangalore highway. The evidence also shows that in Chennai - Bangalore Highway and not at a distance far away from the acquired lands, factories of international repute have come out. Instead of extracting the proof evidence of the claimant, it is better we state hereunder as to what the official witness himself had admitted in his evidence in cross :-

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"Both the acquired lands are adjoining each other; Chennai-Bangalore National Highway is close to the acquired lands and the said highway was there even before the issuance of the notification under Section 4(1) of the Land Acquisition Act; the acquired lands come within the jurisdiction of Poonamallee Municipality; at a distance of 15 kms from the acquired lands, Chennai Corporation limits begins; from the acquired lands places like Kancheepuram, Sriperumbudur and Ranipet are all situated in the National Highway - all within a distance of 40 kms; National Highway road will always have a busy motor vehicular traffic; very close of the acquired lands, there is a Granite Company called "Enterprises and Enterprises"; SIPCOT Industrial Complex and several other small companies are very close to the acquired lands; the Poonamallee bypass road is very close to the acquired lands; 500 feet from the acquired lands Chennai-Tirupathi Highway is situated; behind the acquired lands there is a highway Motel and several other hotels; Chembarambakkam Lake is the main source of water supply to Chennai and the said lake is situated within 1 km from the acquired lands; whether three crops a year can be cultivated in the acquired lands or not, he does not know; close to the acquired lands, there are thick residential areas; two temples are situated close to the acquired lands; whether there are Cinema Theaters close to the acquired lands, he does not know; whether there is a rice mill close to the acquired lands, he does not know; however via the acquired lands, town buses to Chennai go in the road; there is a town bus stand for Meppur; 7 km away is Sri Ramachandra Medical College Hospital; Saveetha Dental College as well as Saveetha physiotherapy College are in the Poonamallee bypass; he does not know whether the acquired lands are potential for being used as factory sites; he does not know the classification of lands and the nature of its soil; whether they can be used as house sites, he does not know and Exs.A.1, A.2 and A.3 are among several sale deeds collected by the Award Enquiry Oficer."

This evidence of R.W.1 is more than sufficient to hold that the acquired lands are in prime and potential area, in close proximity of which, there are several factories of international reputation. Therefore the State Government cannot be allowed to contend that the acquired lands are in underdeveloped area.

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4. We have already noted that under Ex.A.2 a fully developed house site have been sold and we find that on three sides of the plot sold under Ex.A.2 there are houses and on the fourth side there is a road. In between the land covered under Ex.A.2 and the acquired lands, there is another house site in Survey No.11/1B. We perused that sale deed also, since it is available on the file of the Award Enquiry Officer and it is reflected in the award proceedings itself. The documents relating to Survey No.11/1B are document Nos.3 and 13 referred to in the Award Enquiry Proceedings. The description of the land sold under document No.13 is shown as a Village site of an extent of 3540 sq.ft.; it was sold on 30.5.1997 for a total price of Rs.99,000/- working out to Rs.12,193/- as value per cent. A part of the land situated in Survey No.11/1B is sold under document No.3, (i.e.) an extent of 1749 sq.ft. (used as a village site) out of which 195 sq.ft. is a pathway and it is sold on 25.3.1996 for a total price of Rs.44,712/- working out to Rs.10,028/- per cent. So it is clear, that the lands situated in Survey No.11/1B adjoining the lands acquired have been sold on 25.3.1996 and 30.5.1997 and the award proceedings itself show that the value per cent on those two sale deeds comes to Rs.10,028/- and Rs.12,193/-. Notification under Section 4(1) of the Land Acquisition Act in this case was issued on 11.1.1999. We have taken into account Ex.A.2 sale deed which is dated 3.2.1998 i.e. closest to the date on which Section 4(1) notification was issued in this case. From a perusal of the plan Ex.P.4, we find that the data land relied upon by the revenue is not even shown in the plan. R.W.1 did not depose that the lands acquired by the Government for locating a water treatment plant for Chennai Metro Water Supply and Sewerage Board is not ready/fit for putting up the plant construction. He does not even depose that the lands has to be developed so as to enable its usage as a site for constructing the water treatment plant. In the light of our discussion referred to above, we conclude that the lands acquired is comparable on all aspects not only to the land covered under Ex.A.2 situated in Survey No.11/4 but also the lands situated in Survey No.11/1B, which is adjoining the lands acquired. We also hold that the evidence on record disclose that all infrastructural facilities are available for putting into use the acquired lands immediately. There is dearth of evidence from the Government showing that the lands acquired has to be developed for being put into use for the purpose for which it was acquired.

5. Now let us apply our mind as to what would be the market value of the land. The Reference Court accepting Ex.A.2, fixed the market value of the land at Rs.12,208/- per cent. This is mainly based on Ex.A.2. We have already found that under document Nos.3 and 13 noted in the award that lands were sold at the rate of Rs.10,028/- and Rs.12,193/-, the former on 25.3.1996 and the later on 30.5.1997. Ex.A.2 is dated 3.2.1998. Compared to the sale deed dated 30.5.1997, the sale price reflected in Ex.A.2 is slightly on the higher side and therefore the possibility of the land value going up cannot be totally lost sight off. In 2006(3) S.C.C. 205 the Supreme Court had held that there is no Bar in law that data sale

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deeds of small plots being considered and in an appropriate case, especially when other relevant or material evidence is not available, such data sale deeds can be considered after making adequate deductions. In (1991) 4 S.C.C. 506 cited supra, the Supreme Court had held as hereunder:-

> " If smaller area within the large tract is already developed and suitable for building purposes and have in its vicinity roads, drainage, electricity connections etc., then the principle of deduction simply for the reason that it is part of the large tract acquired may not be justified."

The above referred to judgment was considered by the Supreme Court in the judgment reported in 1995(5) S.C.C. 426 (K. VASUNDARA DEVI v. REVENUE DIVISIONAL OFFICER) wherein the Supreme Court had held that when sale deeds of smaller pieces of land are found to be genuine and reliable, sufficient deduction should be made to arrive at the market value of large tracts of land. In JT 2002(9) S.C. 299, the Supreme Court on the facts of that case, sustained the deduction at 20% made by the High Court towards development charges. However in A.I.R.1996 Supreme Court 3168, the case law brought to our notice by the learned Special Government Pleader, the Supreme Court went on to indicate that deduction of 53% towards development charges is valid. This judgment shows that the Supreme Court on facts found that the lands acquired though capable of development, yet, they took into account the fact that development of land would have taken years. In the case on hand we find that the infrastructural facilities are readily available for the acquired lands. R.W.1 did not even depose that expenses must be incurred for development and development is likely to take a number of years. The Supreme Court in A.I.R 1996 S.C.3168 held that each case depends upon its own facts. The facts noted by us on the infrastructural facilities; locational advantages and potential value of the lands acquired, stare at the face of the State.

6. But however we cannot lose sight off the fact that the lands acquired, even according to the land owners are cultivable lands and under actual cultivation raising three crops a year. Therefore for converting the agricultural lands into potential house site some development has to necessarily take place. In the context of several facts noted by us attached to the acquired lands, we are of the opinion that 10% from the value per cent namely, Rs.12,208/- can be deducted and if such a deduction is made, it comes to Rs.9,766.40, which we are inclined to round it off to Rs.10,000/-. Therefore the award in challenge so far as fixing the market value of the lands acquired at Rs.12,208/- per cent is set aside and consequently, the market value is reduced to Rs.10,000/- per cent. The land owners would be entitled to the payment of compensation of the lands acquired from them on the value of Rs.10,000/- per cent. The judgment of the Reference Court on all other aspects is sustained.

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7. It appears that there is some dispute regarding apportionment. This court is informed that some of the legal heirs of the land owners are not impleaded. In our considered opinion, we need not give any direction for apportionment since, if such a dispute is brought to the notice of the Collector, he is bound to refer that dispute to the Civil Court for decision. Under these circumstances, we make it clear that if any of the left out persons, who are entitled to have a share in the compensation amount approaches the Collector raising such a dispute, then the Collector shall refer that dispute to the Reference Court for decision. We make it clear that the Reference Court can wait for a period of thirty days from the date of receipt of a copy of this judgment to decide payment out. Both the appeals stand disposed of accordingly with no order as to costs. Consequently, the connected CMPs are also closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

Tr/

To

1. The Additional District Judge
   Fast Track Court No.IV
   Poonamallee.

2. The Section Officer
   VR Section, High Court
   Madras-104.

2 cc To The Government Pleader, SR.44326, 44327.
2 cc To Mr.K.Balaraman Naidu, Advocate, SR.44288.
1 cc To Mr.K.Govi Ganesan, Advocate, SR.44289.

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RVL 17.10.2006

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